



Planning Building and Development  
Room 166, Noel C. Taylor Municipal Building  
215 Church Avenue, S.W.  
Roanoke, Virginia 24011  
(540) 853-1730

## BOARD OF ZONING APPEALS VARIANCE APPLICATION CHECKLIST

The Roanoke City Board of Zoning Appeals, established pursuant to the provisions of Section 62.01 of the Roanoke City Charter, has the authority to hear and decide on applications for variances from the provisions of the City Zoning Ordinance. Any decision by the Board is final unless the applicant or an aggrieved party files an appeal with the Clerk of the Circuit Court within 30 calendar days after the final decision of the Board.

- ☐ **PRE-FILING CONFERENCE:** Please schedule a pre-filing conference with the Zoning Administrator, by calling (540) 853-1730, to determine the necessity, the grounds, and the completeness and accuracy of the variance request.

**Incomplete applications will not be accepted. A COMPLETE APPLICATION FOR A VARIANCE** includes the following items:

- ☐ **COMPLETED VARIANCE APPLICATION FORM** (2 pages), including **SIGNATURE(S) OF THE APPLICANT(S)**. If the applicant(s) is not the property owner(s), the property owner(s) also must sign the application form, or a consent letter signed by the property owner(s) is required at the time of filing.
- ☐ **VICINITY MAP**, showing the location of the subject property.
- ☐ **DEVELOPMENT PLAN.** *(If the development plan is larger than 11" x 17", 10 copies must be provided by the applicant.)*
- ☐ **ELEVATION RENDERING OR DRAWING TO SCALE** of any proposed building or building addition. *(If the rendering or drawing is larger than 11" x 17", 10 copies must be provided by the applicant.)*
- ☐ **LIST OF ADJOINING PROPERTIES**, including tax map numbers of all abutting properties and properties immediately across any street or alley from the subject property, including any such properties in an adjacent jurisdiction, and the name and mailing address with zip code for the owners of those adjoining properties.
- ☐ **VARIANCE APPLICATION FEE** *(check for \$190 made payable to the City of Roanoke).*

State Code requires that a notice of the variance request and the time and place of the BZA public hearing be published twice in the newspaper. While staff prepares and submits the legal advertisement to the Roanoke Times, the **applicant is responsible for payment of the legal advertisement fees and will be billed directly by the Roanoke Times.**

**FOR FURTHER INFORMATION OR ASSISTANCE, PLEASE CONTACT** the Department of Planning Building and Development at (540) 853-1730.

Filing Deadline is \_\_\_\_\_, 4:00 p.m., for the \_\_\_\_\_ public hearing.

## BOARD OF ZONING APPEALS - APPLICATION FOR VARIANCE

*Please complete both pages of application form.*

### Subject Property:

Street Address \_\_\_\_\_

Tax Map No. \_\_\_\_\_

Size of Property (in acres or square feet) \_\_\_\_\_

Zoning: Base District \_\_\_\_\_ Overlay District(s) \_\_\_\_\_

### Applicant's Name/Address/Zip Code:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone # ( \_\_\_\_\_ ) \_\_\_\_\_

### Owner's Name/Address/Zip Code:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone # ( \_\_\_\_\_ ) \_\_\_\_\_

### IDENTIFY THE SPECIFIC SECTION IN THE ZONING ORDINANCE FROM WHICH YOU ARE REQUESTING

**A VARIANCE:** Request is made for a variance from *Section 36.2- \_\_\_\_\_ of the Code of the City of Roanoke (1979), as amended*, which requires that \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**WHAT IS THE SPECIFIC DEVIATION FROM CODE THAT YOU ARE REQUESTING?** *(Examples: Allow a 15-foot front yard instead of the 20-foot front yard required in Section 36.2-311(d) of the zoning ordinance; Allow an accessory structure to be located closer to a public street than the main building as required in Section 36.2-403(c)(2) of the zoning ordinance)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**DESCRIBE THE PROPOSED PROJECT**, providing all pertinent information regarding the nature and scope of the project (attach additional sheets if necessary):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PLEASE ANSWER THE QUESTIONS BELOW AS THEY PERTAIN TO YOUR VARIANCE REQUEST:**

1. Because of a condition of this property (*exceptional narrowness, shallowness, size or shape; exceptional topographic conditions or other extraordinary situation or condition; or extraordinary situation or condition of the property immediately adjacent*),

(a) How does the strict application of the provision of the zoning ordinance for which you are requesting a variance effectively prohibit or unreasonably restrict use of the property? OR

(b) How would the granting of the variance alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience?

---

---

---

---

---

---

---

2. How is the requested variance in harmony with the intended spirit and purpose of the zoning ordinance?

---

---

---

---

---

3. Explain how the special condition or situation of the property and the resulting undue hardship are not so general or of a recurring nature as to make reasonably practicable the formulation of a general regulation as an amendment to the zoning ordinance.

---

---

---

---

---

4. Explain why there is no other reasonable option to comply with the zoning ordinance without a variance. (*What about a smaller building; altering the location on the site; etc.?*)

---

---

---

---

---

*I understand that if there are any delinquent real estate taxes owed on the subject property, this application will not be processed until such time as the taxes are paid in full pursuant to Sec. 32-7 of the Code of the City of Roanoke (1979), as amended, and Sec. 15.2-2286.B, Code of Virginia (1950), as amended.*

Signature of Applicant \_\_\_\_\_

Date \_\_\_\_\_

Signature of Property Owner \_\_\_\_\_  
(if not applicant)

Date \_\_\_\_\_

Application accepted as submitted in accordance with the provisions of Chapter 36.2, Zoning, Code of the City of Roanoke (1979), as amended.

\_\_\_\_\_  
Secretary to the Board

\_\_\_\_\_  
Date

For Public Hearing on Tuesday, \_\_\_\_\_

# DEVELOPMENT PLAN CHECKLIST

**The applicant is required to submit a development plan with a BZA application.** (If the development plan is larger than 11" X 17", 10 copies of the plan must be submitted with the application.) The development plan shall be drawn to a fixed scale. The development plan shall geographically depict the property that is to be considered and shall address any potential land or design issues arising from the request. The development plan should be prepared (but is not required to be prepared) by a professional surveyor, architect, or engineer.

## A DEVELOPMENT PLAN MUST INCLUDE THE FOLLOWING:

- ☐ Title, preparer, and date of development plan
- ☐ Address and tax map number of property
- ☐ Scale of drawing and north arrow
- ☐ All lot dimensions
- ☐ Location and dimensions, to scale, of all existing and proposed structures
- ☐ Setback measurements from property lines for all existing and proposed structures
- ☐ Location and dimensions of all driveways, parking spaces, and loading spaces
- ☐ Location, width, and name of all existing or platted streets or other public rights-of-way within or adjacent to the property
- ☐ Physical features of the property, such as severe slopes (show contours if applicable), rock formations, substantial tree or vegetative cover, natural watercourses, and flood plain restrictions, if applicable to the request
- ☐ All public or other easements affecting the property, if applicable to the request
- ☐ Water and sewer line locations serving the property, if applicable to the request
- ☐ Dimensions and location of any outdoor play areas, storage yards, or similar existing or proposed improvements, which are applicable to the request
- ☐ Delineation of any required landscaping, including location, size, and description of required planting areas and planting materials

---

I hereby certify that all items in the checklist above, which are applicable to my variance request, have been delineated on the development plan and are accurate and complete.

---

Signature of Applicant

---

Date

## SAMPLE LISTING OF ADJOINING PROPERTY OWNERS

Official Tax No./Street Address Of Adjoining Property	Name of Property Owner	Mailing Address of Property Owner
1010101 123 Any Street, NW	John and Jane Doe	123 Any Street Roanoke, VA 24011
1010102 125 Any Street, NW	John and Mary Smith	345 Main Street Roanoke, VA 24011
1010103 125 All Street, NW	John and Jane Williams	678 Your Street Roanoke, VA 24011

**NOTE:** Adjoining property owners can be identified through City real estate records. Access to real estate records is available in the City of Roanoke Real Estate Valuation Office located in Room 250 of the Noel C. Taylor Municipal Building. Real estate records also can be accessed through the City of Roanoke web site at [www.roanokeva.gov](http://www.roanokeva.gov) (click on the GIS-Real Estate link on the home page).



## PROCEDURES VARIANCES

### What is a variance?

A *variance* is defined in *Virginia Code §15.2-2201* as a reasonable deviation from those provisions of a zoning ordinance regulating the size or area of a lot or parcel of land, or the size, bulk, or location of a building or structure. A variance may not allow a use in a district not authorized by the district regulations, which only may be accomplished by a rezoning or a conditional zoning. *Virginia Code §15.2-2201*. A granted variance runs with the property.

### Who is authorized to grant a variance?

The *Board of Zoning Appeals (BZA)*, a body of seven (7) citizens appointed by the City Council, has the power to hear and decide on applications for variances from the terms of the Zoning Ordinance.

The *Zoning Administrator* is authorized to administer, interpret, and enforce the Zoning Ordinance. The Zoning Administrator's authority is strictly defined. The Zoning Administrator does not have discretionary powers and, therefore, can only approve a request that clearly conforms to the requirements of the Zoning Ordinance.

### What is the procedure for requesting a variance?

An application for a variance may be made by any property owner, tenant, government official, department, board or bureau. Staff will check the application for completeness before accepting it for filing.

Applications must be filed by 4:00 p.m. on the 2<sup>nd</sup> Wednesday of the month in order to be heard at the next month's BZA meeting. (For example, applications filed by the 2<sup>nd</sup> Wednesday in March will be on the agenda for the BZA's April meeting). The BZA meets on the 2<sup>nd</sup> Tuesday of each month, at 1:00 p.m., in the Council Chambers on the 4<sup>th</sup> floor of the Noel C. Taylor Municipal Building. A schedule of BZA meeting dates and application deadline dates for the current year are available by accessing the City's web page @ [www.roanokeva.gov](http://www.roanokeva.gov) and then clicking on the link to the Department of Planning Building and Development or by contacting the Department at 853-1730.

A variance may be authorized by the BZA only after notice and public hearing as required by *Virginia Code §15.2-2204*. Required notice includes publication of the time and place of the hearing twice in a newspaper of general circulation and mailed notice to the owners of all abutting property and property immediately across the street.

### Is there a filing fee or other costs when requesting a variance?

There is a non-refundable filing fee of \$190.00 which must be paid when your application for a variance is filed with the Board. The filing fee covers researching, reviewing, and processing the application. In addition, State Code requires that the City advertise any application request and the related public hearing information twice in the local newspaper. The applicant is responsible for payment of all legal advertisement fees charged by the newspaper. If an application is withdrawn and the legal advertisement(s) in the newspaper has already been run or it is too late to be pulled, the applicant remains responsible for the cost of the legal ad.

### **What happens after filing an application for a variance?**

Once the application is accepted, it will be placed on the agenda for the meeting corresponding to the application deadline date. Legal notices advertising the public hearing will be published in the local newspaper once a week for two (2) consecutive weeks as required by State Code. In addition, the Secretary to the Board will notify, by mailed letter, all adjacent property owners of your request.

The Zoning Administrator will prepare a staff report for the Board concerning your request which will include pertinent code sections, facts of the case, and issues as they relate to the standards for the granting of variances. You will receive a copy of this staff report and a reminder of the date, time, and place for the public hearing approximately one (1) week prior to the meeting.

Members of the Board inspect your property on the morning of the public hearing to better appreciate the circumstances related to your request and the land or structure involved.

### **Do I have to attend the public hearing? Who can speak at the hearing?**

You are not required to attend the public hearing, but attendance by you (or your representative) is highly recommended.

At the public hearing, anyone may speak in favor of, or in opposition to, any application. Written comments may also be submitted.

### **Do I need a lawyer or other professional representative?**

There is no "yes" or "no" answer to this question. Many individual property owners appear on their own behalf, but if you are more comfortable with professional representation to assist with your application and answer questions on your behalf, that is certainly satisfactory.

### **How long do I have to wait for a decision?**

After hearing all comments at the hearing, the Board will discuss the application and the evidence presented and will act on the application. If the BZA feels it requires more information in order to reach a decision, the Board may vote to continue the public hearing to a date certain, but in the great majority of cases the Board acts on the application on the same day as the initial hearing.

The concurring vote of a majority of the membership of the BZA is necessary to grant a variance. This means that the City's seven (7) member BZA may grant a variance only if at least four (4) members of the Board vote for granting the variance. This means that if only four (4) members are present, all four (4) must vote in favor of granting the variance.

In authorizing a variance, the BZA may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest. *Virginia Code §15.2-2309(2)*.

### **Is the decision of the Board final? Can the decision be appealed? Can I ask the Board to reconsider?**

Any decision of the Board is final unless the applicant or an aggrieved party files an appeal with the Clerk of the Circuit Court within thirty (30) calendar days after the final decision of the Board.

Once the Board considers and renders a decision on an application, the Board cannot reconsider substantially the same request for one (1) year, except when the decision is the subject of a motion to rehear as set forth in the Board's bylaws.

## What are some of the other things I should know about variances?

The *Board of Zoning Appeals (BZA)* is a quasi-judicial body authorized to hear and decide on applications for variances from the terms of the Zoning Ordinance. Although the BZA has certain discretionary powers in making its decisions, these powers have definite limits. The BZA must always abide by and comply with the powers granted to it by the Zoning Ordinance and the state enabling acts set forth in the *Virginia Code*.

Variances may not be approved for reasons other than those set forth in *Virginia Code §15.2-2309(2)*. In rendering a decision on a variance, the BZA must make certain findings based on the specific standards set forth in State Code. It's important that as an applicant for a variance that you review the standards that the Board must follow and consider how these standards affect your request. It is also important that, as the applicant, you understand that you must be prepared to show hardship as defined by the Zoning Ordinance and the *Code of Virginia*. The following information is provided to assist you in the preparation of your application and in preparing for the public hearing.

According to *Section 15.2-2309 of the Code of Virginia*, a variance may be granted if it “will not be contrary to the public interest, when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done.” (An applicant must establish *special conditions* that would cause compliance with a zoning ordinance to result in an *unnecessary hardship*.)

An applicant for a variance should be prepared to present and discuss the following elements as they relate to the specific application:

- The property was acquired in good faith.
- Because of a condition of the property, the strict application of a zoning ordinance would effectively prohibit or unreasonably restrict the use of the property, OR the granting of a variance would alleviate a clearly demonstrable hardship. A qualifying condition of the property must arise from one of the following:
  - The property's exceptional narrowness, shallowness, size, or shape;
  - The property's exceptional topographic conditions or other extraordinary situation or conditions; or
  - An extraordinary situation or condition of the property immediately adjacent.
- The variance is in harmony with the intended spirit and purpose of the zoning ordinance.
- The condition or situation of the property is not so general or of a recurring nature as to make a general regulation (amendment to the ordinance) reasonably practicable.

## **VARIANCE STANDARDS: CONSIDERATION OF A VARIANCE REQUEST**

Pursuant to *Sec. 36.2-561(c) of the Code of the City of Roanoke (1979), as amended*, in considering a request for a variance, the Board shall consider the following circumstances in order to determine if a hardship exists:

- The subject property is exceptional as compared to other lots subject to the same provision by reason of a unique physical condition of the subject property, including:
  - Exceptional narrowness, shallowness, size, or shape;
  - Exceptional topographic conditions; or
  - Other extraordinary situation or condition peculiar to and inherent in the subject property or to the condition, use, or development of the property immediately adjacent thereto;
- The unique physical condition set forth is not the result of any action or inaction of the owner or his predecessors in title and existed at the time of the effective date of the regulation(s) of the zoning ordinance from which a variance is sought;
- The alleged hardship is a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the applicant; and
- The requested variance would not result in a use or development of the subject property that would not be in harmony with the intended spirit and purpose of Chapter 36.2, Zoning, of the Code of the City of Roanoke (1979), as amended.

More specifically, pursuant to *Sec. 36.2-561(d) of the City Code*, the Board of Zoning Appeals shall authorize a variance only if it makes all five (5) of the following findings:

- That the strict application of the zoning ordinance would produce undue hardship relating to the property;
- That such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
- That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance;
- That the condition or situation of the property concerned or the intended use of the property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the zoning ordinance; and
- That the variance is no greater than the minimum variation necessary to relieve the unnecessary hardship demonstrated by the applicant.